

REMARKS

Initially, Applicants again thank the Examiner for indicating the allowability of claims 39-44 and 47-55.

In the outstanding Final Office Action, claims 38, 45, 46, 56, 58 and 61-69 were again rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Final Office Action again asserts that the present patent application as filed does not provide a written description of the invention to which claim 38 is directed, and particularly of “said chamber being substantially free of fluid flow obstructions extending in a direction transverse to the jet fluid flow in a region between said second fluid inlet and said first fluid inlet”. Applicants again traverse the rejection of claims 38, 45, 46, 56, 58 and 61-69 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Initially, Applicants note that a Declaration Under 37 C.F.R. 1.132 is submitted herewith. The Declaration Under 37 C.F.R. 1.132 is executed by Richard Malcolm Kelso, an inventor of the invention to which the claims of the present patent application are directed. The statements in the Declaration are consistent with the remarks in the previous Response Under 37 C.F.R. 1.111, and establish that the present patent application as filed explicitly and/or implicitly supports the features of claim 38 which the Final Office Action asserts are not described in the present patent application as filed.

In the Final Office Action, the Examiner asserts that *Ex parte Grasselli et al.* (231 USPQ 393) is “remarkably similar” to the fact pattern of the instant issue. The Final Office Action also cites *Purdue Pharma L. P. v. Faulding Inc.* 56 USPQ 1481 (CAFC 2000) for the proposition that

“one skilled in the art, reading the original disclosure, must ‘immediately discern the limitation at issue in the claims’”.

Regarding the assertion with respect to *Ex parte Grasselli et al.*, Applicants note that *Ex parte Grasselli et al.* found a lack of written description for a negative limitation of a “catalyst being free of uranium and the combination of vanadium and phosphorus”. However, *Ex parte Grasselli et al.* does not indicate that any support exists for the objected-to negative limitation in the application as filed. In contrast, the previous Response Under 37 C.F.R. 1.111 and the Declaration point to numerous examples of support for the features of claim 38. Further, the outstanding Final Office Action does not provide any alternative interpretation of the numerous noted examples of support that would be contrary to the features of claim 38.

Thus, *Ex parte Grasselli et al.* is not “remarkably similar” to the fact pattern of the instant issue. In this regard, while *Ex parte Grasselli et al.* dealt with a negative limitation, the decision of the Board and Patent Appeals and Interferences does not include any discussion of specific support for the limitation at issue. In contrast, as explained in Applicants’ previous Response and in the Declaration being concurrently submitted, numerous examples of explicit, implicit and inherent support are provided in the specification as filed for the disputed negative limitation of claim 38, and no alternative interpretation of these features is available that would be contrary to the features of claim 38.

With respect to the second assertion (i.e., with respect to *Purdue Pharma L. P. v. Faulding Inc.*), the immediacy of the discernment of a limitation at issue is not so much a relative measurement of time as a relative measurement of the clarity of support provided in the specification as filed for a disputed limitation. Applicants have pointed to several aspects of the disclosure, and

particularly the Figures, which would lead one skilled in the art to immediately discern the limitation at issue in the claims. For example, one viewing the noted portions of the specification and Figures would discern the direction of jet fluid flow, and would discern the absence of fluid flow obstructions extending in a direction transverse to the jet fluid flow in the region defined in the rejected claims. Further, the Examiner has not advanced any alternative reasonable interpretation of these noted features that would be contrary to the features of claim 38. Accordingly, one skilled in the art, reading the original disclosure, would immediately discern the limitations at issue in claim 38, and even after extended consideration, no alternative reasonable interpretation of the noted portions of the original disclosure has been advanced.

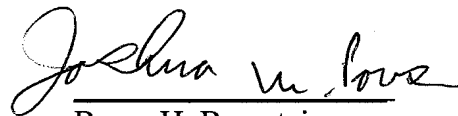

Accordingly, the specification of the patent application as filed provides a written description of the invention to which claim 38 is directed, and particularly of “said chamber being substantially free of fluid flow obstructions extending in a direction transverse to the jet fluid flow in a region between said second fluid inlet and said first fluid inlet”.

As described above, support for the above noted feature recited in claim 38 is provided either explicitly or implicitly in the application as filed. That is, as described above, the features of claim 38, which the Final Office Action asserts are not described in the specification of the patent application as filed, are adequately supported in the original application. Accordingly, a skilled artisan reading the disclosure of the patent application as filed would understand that Applicants possessed, at the time the application was filed, a chamber substantially free of fluid flow obstructions extending in a direction transverse to the jet fluid flow in a region between the second fluid inlet and the first fluid inlet, in order for the fluid mixing device to function as described in the patent application as filed.

At least for each and all of the reasons set forth above, Applicants respectfully submit that independent claim 38 is allowable under 35 U.S.C. §112, first paragraph. Dependent claims 45, 46, 56, 58 and 61-69 are allowable at least for depending, directly or indirectly, from an allowable independent claim, as well as for additional reasons related to their own recitations.

Should there be any comments regarding this Response or the Declaration that is concurrently submitted, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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